IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.2910 of 2005

TUESDAY, THE SEVENTEENTH DAY OF APRIL TWO THOUSAND AND SEVEN

Between:

Board of Secondary Education, AEL Church, rep. by its Chairman Smt L.h. Bharathi, W/o. late M. Abraham, 67 years, Guntur, Guntur District.

… Petitioner

And

The District Educational Officer, Prakasam District, At Ongole, and another.

… Respondents

Order:

Petitioner seeks a Writ of Mandamus to declare the action of the first respondent, the District Educational Officer, Prakasam, in not deputing a nominee for the purpose of constituting Staff Selection Committee, as contemplated under Rule 12 (3) of the Rules framed under G.O.Ms.No.1 Education Department dated 01-01-1994, as illegal and arbitrary and a direction to the first respondent to constitute

selection committee to fill up the vacant aided teaching and non-teaching posts in Lutheran High School, Tarlapadu.

2. Heard learned counsel for the petitioner and learned Government Pleader for School Education appearing on behalf of respondents.

3. Petitioner is running several educational institutions and one of the institutions being run by it is Lutheran High School, Tarlapadu. In the said school, certain teaching and non-teaching posts were admitted to grant-in-aid. To fill up these vacant aided posts, petitioner sought permission from the respondents. As much as it was the case of the petitioner that Lutheran High School was a Christian minority institution, the Regional Joint Director, School Education, by proceedings dated 02-02-2004, permitted the school to fill up one post of B. Ed. Assistant, three posts of Secondary Grade Teachers, one post of Physical Education teacher, one post of Telugu Pandit – Grade. II and one post of Attender, with Christian minority candidates, subject to the conditions notified therein.

4. The case of the petitioner is that pursuant to such permission, advertisement was issued in the local newspapers on 23-02-2004 and several applications were received. Its grievance is that department nominee, as contemplated under Rule 12 (3) of the Rules framed under G.O.Ms.No.1 Education Department dated 01-01-1994, has not been deputed for the purpose of constituting Staff Selection Committee enabling it to fill up the vacancies.

5. Respondents 1 and 2 have filed counter affidavit stating that though petitioner is claiming that Lutheran High School, Tarlapaadu, is

a Christian minority institution, it has not produced the certificate issued by the Government certifying it to be a Christian minority institution. It is stated that as the petitioner did not produce such certificate, as per the instructions of the Regional Joint Director, School Education, department nominee has not been deputed. It is further stated that Government, vide Memo No.12080/COSE/A2/2004-04 dated 20-10-2004, imposed ban on filling up aided posts. It is also stated that department nominee would be deputed only after the petitioner submits the minority certificate issued by the Government.

6. Imposition of ban on filling up vacant aided posts fell for consideration before this court in a batch of cases in W.A.No.1578 of 2005 and batch, wherein a Division Bench of this court, by order dated 29-12-2006, disposed of the said batch of cases, recording a finding that the aforesaid memo, by which ban was imposed, does not have the effect of stultifying the process of recruitment initiated by the management of the private schools prior to 20-10-2004.

7. In this case, it is not in dispute that petitioner was permitted by the competent authority to fill up vacant posts by proceedings dated 02-02-2004, well before the ban was imposed by the Government by the aforesaid memo. In that view of the matter, the defence of the respondents, that in view of the ban imposed by the Government, petitioner cannot be permitted to fill up the vacancies, cannot be accepted. Even in the proceedings of the Regional Joint Director, School Education, dated 02-02-2004, vacant posts were permitted to be filled up only with Christian minority candidates on the claim of the petitioner that the school is a Christian minority institution.

8. At this stage, learned counsel for the petitioner submits that though the application filed by it seeking minority status, is pending

consideration before the respondents, no action whatsoever has been taken and the vacancies are not allowed to be filled up on the ground that it has not produced the minority certificate.

9. As much as it is stated that the application filed by the petitioner before the respondents, seeking to confer minority status, is pending consideration, and the vacant aided posts are not allowed to be filled up for want of minority certificate from the petitioner, I dispose of the Writ Petition permitting the petitioner to make an application to the District Educational Officer, Prakasam, as and when it obtains minority certificate from the respondents, annexing a copy of such certificate, for deputing a nominee, as per Rule 12 (3) of the Rules framed under G.O.Ms.No.1 Education Department dated 01-01-1994. If any such application is received by the respondents along with the minority certificate, respondents shall depute a nominee for the purpose of filling up the vacant aided teaching and non-teaching posts in Lutheran High School, Tarlapadu, as per the proceedings of the Regional Joint Director School Education dated 02-02-2004, without reference to the ban imposed by the Government by the memo referred above. No costs.

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JUSTICE R. SUBHASH REDDY.

April 17, 2007
MRR